

EXHIBIT

A

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
TIME SQUARE CONSTRUCTION, INC.,

Plaintiff,

-against-

Civil Action No.
07-CV-7250

MASON TENDERS DISTRICT COUNCIL OF
GREATER NEW YORK & LONG ISLAND
AND CONSTRUCTION GENERAL LABORERS
JATC, LOCAL UNION NO. 79,

Defendants.
-----x

October 18, 2007
3:04 P.M.

Deposition of Defendant

CONSTRUCTION GENERAL LABORERS JATC, LOCAL
UNION NO. 79, by JOSEPH CANGELOSI, taken by
Plaintiff, pursuant to Notice, at the offices
of McDermott Will & Emery, LLP, 340 Madison
Avenue, New York, New York 10173-1922, before
Charisse Romeo, a Shorthand Reporter and
Notary Public within and for the State of New
York.

ARTA PASCULLO, President



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1 J. Cangelosi

2 A. No.

3 Q. How long have you been with Local
4 79?

5 A. I've been with Local 79 coming up
6 on six years, May will be six years.

7 Q. Prior to that, did you hold
8 positions in the construction industry?

9 A. Yes, I was a laborer by trade.

10 Q. Can you explain to me, is there
11 any difference between a subcontractor and a
12 construction manager?

13 A. A subcontractor and construction
14 manager?

15 Q. Yes.

16 A. Absolutely.

17 Q. How would you define the
18 difference, what does one do and the other do?

19 A. Construction manager is the more
20 or less the general contractor. He is in
21 charge of the whole construction site.

22 Subcontractor is one of the -- could be
23 the electrician performing work on the job, it
24 could be the carpenter performing work on the
25 job. It could be the tin knockers performing

1 J. Cangelosi

2 work on the job. It is the contractor who
3 doesn't have responsibility for the whole
4 site.

5 Q. Okay. As a general rule, 'do
6 construction managers subcontract work to
7 companies that do specialized kind of work?

8 A. Yes, absolutely.

9 Q. On the job?

10 A. Absolutely.

11 Q. So the general contractor would
12 subcontract work to a plumbing company?

13 A. Yes.

14 Q. Or would subcontract work to a
15 concrete company?

16 A. Yes.

17 Q. Steamfitting work to a
18 steamfitter, et cetera?

19 A. Absolutely, yes.

20 Q. Is there, when you were working
21 in the construction industry, and based on
22 your knowledge since you've been with Local
23 79, is there a difference between the
24 renovation of an existing building and
25 construction of a new building?

1 J. Cangelosi

2 McGovern, Amec, Pavarini, Structure Tone.

3 Q. In terms of the contracts that
4 you have with construction management
5 companies, are the agreements covering
6 laborers who work directly for those
7 companies?

8 A. Say that again.

9 Q. Let me make it clearer. The
10 collective bargaining agreements that you have
11 with construction management companies, do
12 those agreements cover employees who work for
13 the construction management companies?

14 A. Absolutely.

15 Q. And that would be where you have
16 laborers employed directly by the construction
17 management company?

18 A. Absolutely.

19 Q. Can you explain what is the
20 Paymaster System?

21 A. The Paymaster System is where we
22 allow an outside company who is not signatory
23 with the Local to run payroll through another
24 company.

25 Q. For what purpose?

1 J. Cangelosi

2 A. For purpose of putting
3 representation, having men on the job
4 represented by a collective bargaining
5 agreement.

6 Q. Is the purpose of the Paymaster
7 System, tell me if I understand, a company
8 that you do not have a contract with wants to
9 employ someone who is a member of the union
10 and the person needs to get their union
11 benefits, contributions made on his behalf --

12 A. Correct.

13 Q. -- and the nonunion company that
14 is employing that person can't make those
15 contributions because they are not a
16 signatory?

17 A. Correct.

18 Q. So what they do is, by agreement
19 with the union, those people are put on the
20 payroll of a union company so that company can
21 make the contributions on their behalf because
22 it is a signatory?

23 A. Correct.

24 Q. Is that the way it works?

25 A. Yes.

1 J. Cangelosi

2 A. Absolutely.

3 Q. When did the union first get
4 knowledge of the job at 785 Eighth Avenue?

5 A. I got knowledge of that job back
6 in February, was it, February of '06.

7 A. Russo Wrecking was contracted
8 to take down a couple of buildings that were
9 existing at that location.

10 Q. Okay. At that time, was there
11 any Local 79 presence on that job?

12 A. Absolutely.

13 Q. Employees of A. Russo?

14 A. Yes.

15 Q. After A. Russo finished -- they
16 did the demolition?

17 A. They took down the buildings,
18 correct.

19 Q. Did there come a point in time
20 when you -- when anyone from Local 79 sought
21 to have Local 79 people put back on the job
22 after A. Russo finished?

23 A. Yes.

24 Q. When was that?

25 A. That was -- I went on vacation in

1 J. Cangelosi

2 May. I probably started frequenting that job
3 in the beginning or middle of April.

4 Q. Did you have discussions with
5 anybody requesting -- did the union request
6 that Local 79 be put on that job, that
7 construction job?

8 A. I spoke with -- at the time, I
9 had spoken to -- first initial contact was
10 Wayne Murphy.

11 Q. Who is Wayne Murphy?

12 A. Site safety man on the job.

13 Q. He is not a Local 79 member?

14 A. Well, yes, he is a 79 member, but
15 he wasn't working in 79's capacity on that job
16 per se.

17 Q. Whose capacity was --

18 A. He was working for Navillus as a
19 site safety guy. I don't know if he was being
20 paid laborer's work, he may have had a deal
21 worked out because he was doing work outside
22 of our jurisdiction. He may have had a
23 separate package. I don't know.

24 Q. Tell me what your conversation
25 was with Murphy, what he said to you.

1 J. Cangelosi

2 A. I spoke to Wayne and I says, you
3 know, I approached Wayne about Navillus doing
4 the job and he more or less told me it's
5 Navillus but, you know, Navillus and Times
6 Square, you have to talk to Fergal and that's
7 when I started speaking to Fergal.

8 Q. Fergal, being Fergal Conefrey?

9 A. I don't really know his last
10 name.

11 Q. What were your conversations with
12 Fergal?

13 A. I spoke with Fergal a couple of
14 times being the job was at the point where the
15 first few floors of the concrete was done and
16 cleared out and 79's jurisdiction of work is
17 usually, once they are up a couple of floors,
18 we come in and handle the labor on that job.

19 Q. Okay. And --

20 A. Fergal said, that's fine. He
21 said, you need to speak to Gabriel. Gabriel
22 will handle everything.

23 Q. Did you speak to Gabriel?

24 A. Yes.

25 Q. What did he say?

1 J. Cangelosi

2 THE WITNESS: Can I ask him that?

3 Q. I am just asking you the
4 question.

5 A. Okay.

6 Q. For example, did, to your
7 knowledge -- and apparently, you are saying it
8 could have been Mr. Brosnan because you were
9 away when this was done?

10 A. Right.

11 Q. Would it have mattered to Local
12 79 that Navillus would be the Paymaster as
13 opposed to some other 79 contractor?

14 A. Before employment or after
15 employment?

16 Q. At the time that the union agreed
17 to provide a Local 79 person.

18 A. Right.

19 Q. That the --

20 A. If it was Navillus or Joe Schmoie,
21 at the initial point, no, it doesn't matter.

22 Q. It doesn't matter?

23 A. No.

24 Q. Okay. And it matters thereafter?

25 A. Yes.

1 J. Cangelosi

2 representation on the job?

3 A. Our jurisdiction at that point,
4 it was -- there's union work on the job, we
5 were looking to have union presence on the
6 job.

7 Q. Okay. So you were looking --
8 would it be fair to say you were looking in
9 whatever form to have a Local 79 union member
10 working on that construction job somewhere?

11 A. Correct.

12 Q. That is the sum and substance of
13 it?

14 A. Right.

15 Q. My point is: It wasn't like
16 Times Square or, for that matter, Navillus
17 asked Local 79, hey, we want a 79 person?

18 A. No.

19 Q. The initiation came from Local
20 79?

21 A. Absolutely.

22 Q. Do you know, in terms of Mr.
23 Albanese, do you know who actually gave him
24 job assignments?

25 A. Lenny.

1 J. Cangelosi

2 Q. And, again, do you know who Lenny
3 works for?

4 A. According to Lenny, Times Square.

5 Q. Times Square?

6 A. Yes.

7 Q. Now, did there come a time when
8 you learned that Navillus didn't want to be
9 the Paymaster anymore from Mr. Albanese?

10 A. There came a point in time where
11 Nicky Albanese was given a check by someone
12 else.

13 Q. And did you have any discussions
14 with anyone from either Navillus or from Times
15 Square about that?

16 A. Um --

17 Q. Were you around at the time?

18 A. Yes, I was there when Nicky, not
19 presently there, and Nicky called me and told
20 me someone was trying to give him a check from
21 another company.

22 Q. Did you intercede at that point?

23 A. Yes. I told Nicky, you don't
24 work for him, you can't accept a check from
25 someone you don't work for.

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2 A. Absolutely. Our collective
3 bargaining agreement says that.

4 Q. Do you typically have agreements,
5 when you have collective bargaining agreements
6 with general contractors, is there something
7 in your agreements that lays this out?

8 A. Yes, they are not allowed to hire
9 anyone that is doing our jurisdiction of work,
10 they can't hire someone who is not signatory.

11 Q. Including subcontractors?

12 A. Absolutely.

13 Q. So your agreements you have with
14 construction managers, you have a signed
15 agreement that specifically says they will
16 only subcontract work that Local 79 considers
17 theirs to Local 79 contractors?

18 A. Right.

19 Q. Okay. But you didn't have such
20 an agreement with Times Square?

21 A. No.

22 Q. Did there come a point in time
23 where the union thought that Times Square and
24 Navillus were the same company?

25 A. Yes.

1 J. Cangelosi

2 Q. When was that?

3 A. At the very beginning of the job,
4 I thought that.

5 Q. Why was that?

6 A. Because the first permits came to
7 Navillus Construction. The total demo by A.
8 Russo Wrecking was subbed out by Navillus to
9 A. Russo Wrecking. GC subs that out.

10 I've dealt with Kieran Power back
11 in 2005, when he was working with Navillus.

12 In August of 2005, Gabriel wasn't
13 handling the manpower. For some strange
14 reason, I was referred to Kieran Power. Wayne
15 Murphy told me they were the same company.

16 Q. Wayne Murphy told you?

17 A. It is Navillus but, you know, he
18 said Times Square and Navillus are the same
19 company. I work for them.

20 Q. Did he say he was on both
21 companies' payrolls?

22 A. No.

23 Q. When did he tell you that they
24 are the same company? Wayne Murphy?

25 A. First day I met Wayne on the job

1 J. Cangelosi

2 on the trailer.

3 Q. On Eighth Avenue?

4 A. Yes.

5 Q. Did -- do you recall -- you've
6 had dealings with Navillus before this job?

7 A. Oh, yes.

8 Q. Navillus is a big contractor for
9 Local 79.

10 A. Absolutely.

11 Q. Do you know of any other
12 situation, do you know of any other situation
13 where Navillus was acting as a construction
14 manager on the construction of a new building?

15 A. Offhand, no, but I'm sure they
16 have.

17 Q. Why are you sure they have?

18 A. I heard they do buildings out in
19 Queens. We talk in the office. They've been
20 known to GC some jobs.

21 Q. Have they GC'd jobs that are the
22 construction of new buildings?

23 A. As far as I know, I know they did
24 a police department downtown.

25 Q. They built a police department

1 J. Cangelosi

2 O'Sullivan and Kevin O'Sullivan
3 marked Plaintiff's Exhibit 3 for
4 identification, as of this date.)

5 MR. PETERSON: Let me just say,
6 we initially indicated we would make
7 the head of the grievance department
8 available as our witness and there was
9 some concern made by your office that
10 that person would not be aware of --

11 MR. COHEN: What I served was a
12 notice of deposition for a witness or
13 witnesses who would be able to answer
14 the questions, okay?

15 It doesn't have to be one witness
16 and it is made clear in the notice of
17 deposition.

18 So if you are telling me this
19 gentleman is not in a position to
20 answer these questions, then we're
21 going to have -- you have to provide a
22 person who will, but let me see if he
23 does have knowledge.

24 MR. PETERSON: That's fine.

25 Q. Why is it -- if I understand you

1 J. Cangelosi

2 correctly, the reason why the union would have
3 filed a demand for arbitration against Times
4 Square is not because of the Paymaster System,
5 it is because you believe they are the same
6 company?

7 A. No.

8 Q. No?

9 A. This was brought against
10 Navillus, I believe, to get the guy's checks
11 because they were trying to pay him under
12 something else.

13 Q. So this has nothing to do with
14 Times Square?

15 A. No.

16 Q. And what you are looking at is
17 Plaintiff's Exhibit 3, correct?

18 A. This is getting Nick his back
19 money.

20 Q. And your understanding -- right,
21 and your understanding is that this is being
22 brought against Navillus because they were the
23 Paymaster?

24 A. Right.

25 Q. And it has nothing to do with